

**FCC MAIL SECTION**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

**DISPATCHED**  
MM Docket No. 94-115

In the Matter of

Amendment of Section 73.202(b),	RM-8508
Table of Allotments,	RM-8562
FM Broadcast Stations.	
(Woodville and Liberty,	
Mississippi; <sup>1</sup> Clayton and	
Jena, Louisiana)	

**REPORT AND ORDER**  
(Proceeding Terminated)

**Adopted: April 5, 1996;**

**Released: April 23, 1996**

By the Chief, Allocations Branch:

1. At the request of PDB Broadcasting ("PDB"), former permittee of Station WLGG(FM), Channel 299A, Woodville, Mississippi, the Commission has before it the *Notice of Proposed Rule Making and Order to Show Cause*, (adopted September 22, 1994) 9 FCC Rcd 5718 (1994), proposing the substitution of Channel 299C3 for Channel 299A at Woodville and modification of petitioner's authorization to specify operation on the higher powered channel. To accommodate the substitution of Channel 299C3 at Woodville, petitioner also proposed the substitution of Channel 274A for Channel 257A at Jena, Louisiana, and the modification of Station WJNA(FM)'s license to specify the change in channel; and the substitution of Channel 257A for vacant but applied for Channel 300A at Clayton, Louisiana. Radio KPEL-FM ("KPEL"), licensee of Station KPEL(FM), Erath, Louisiana, filed a motion for stay of procedural dates, an objection, and a motion to terminate. Gary P. Alvarez ("Alvarez") filed comments and a counterproposal.<sup>2</sup> Clayton FM Partnership ("Clayton") filed comments. PDB filed a motion seeking to withdraw its upgrade proposal and terminate the proceeding. Alvarez

filed reply comments opposing PDB's effort to terminate the proceeding and reply comments on counterproposal.<sup>3</sup> PDB filed an untimely counterproposal and comments.<sup>4</sup> For the reason discussed below, we will dismiss PDB's proposal to upgrade Station WLGG(FM)'s facility and adopt Alvarez's counterproposal.

2. Review of the Commission's records indicate that this PDB's rule making petition was filed on July 28, 1994. Therefore, by letter dated August 7, 1994, the Commission cancelled PDB's construction permit for Station WLGG(FM) for failure to construct within the required time period and deleted the station's call letters. Subsequently, PDB, on September 30, 1994, filed an untimely application which was treated as a petition for reconsideration of the cancellation of the construction permit. PDB's petition for reconsideration was denied on August 1, 1995. Further, on December 13, 1994, PDB filed a motion to withdraw its rule making petition and represented that it did not receive any consideration for withdrawn.

3. In his counterproposal, Alvarez requests the allotment of Channel 299C3 to Liberty, Mississippi, as the community's first local aural transmission service. In order to accommodate the new allotment at Liberty, Alvarez also requests the deletion of Channel 299A at Woodville, Mississippi. Alvarez states Liberty is the county seat of Amite County, Mississippi, and is deserving of a wide coverage area FM service. Alvarez contends that the allotment of Channel 299C3 at Liberty would be able to provide service to a considerably greater number of people as compared to the number of people receiving either Channel 299A or Channel 299C3 at Woodville. Alvarez states that petitioner's proposal would provide service to only 32,364 people, while Channel 299C3 at Liberty would provide service to 57,998, an increase of approximately 69 percent. Furthermore, Woodville would not be deprived of any existing service, since petitioner has never constructed or placed on the air its previously authorized facilities.

4. Based on the pleadings before us, we believe the public interest would be served by adopting Alvarez's counterproposal since it would provide Liberty<sup>5</sup> with its first local aural transmission service. An engineering analysis has determined that Channel 299C3 can be allotted to Liberty in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) northwest.<sup>6</sup> We will also delete vacant Channel 299A at Woodville in order to accommodate the new allotment at Liberty.<sup>7</sup>

<sup>1</sup> The community of Liberty has been added to the caption.

<sup>2</sup> Public Notice of Alvarez's counterproposal was given on December 12, 1994, Report No. 2046.

<sup>3</sup> We need not discuss any comments relating to petitioner's proposal to upgrade at Woodville, Mississippi, in light of our resolution of this proceeding.

<sup>4</sup> Section 1.420(d) of the Commission's Rules and paragraph 3(a) of the Appendix to the *Notice of Proposed Rule Making* state that counterproposals will not be considered if advanced in reply comments. Therefore, we shall not consider petitioner's new allotment scheme since it constitutes an untimely filed counterproposal. See, *Vancouver, Washington, et al.*, 4 FCC Rcd 839 (1989) and, *Grove City, Pennsylvania and Hubbard, Ohio*, 4 FCC Rcd 7904 (1989), *recon. denied*, 6 FCC Rcd 7114 (1991). Petitioner also filed untimely comments in response to its own counterproposal. In view of the disposition of petitioner's late-

filed counterproposal, the additional responsive comments filed are moot and need not be discussed.

<sup>5</sup> According to the 1990 U.S. Census, Liberty is an incorporated community with a population of 624 persons.

<sup>6</sup> The coordinates for Channel 299C3 at Liberty are North Latitude 31-10-44 and West Longitude 90-49-51.

<sup>7</sup> Petitioner filed an expression of interest in the retention of Channel 299A at Woodville on February 3, 1995. However, we conclude that petitioner's expression of interest is untimely filed. The deadline for expressions of interest in the Woodville proposal was December 27, 1994, the cut-off established in the *Public Notice* accepting Alvarez's counterproposal. See Report No. 2046, released December 12, 1994. The Commission's policy is not to consider an untimely filed expression of interest in an allotment where acceptance would cause an adverse impact on a pending proposal. See *Amor Family Broadcasting Group v. FCC*,

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 7, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Woodville, Mississippi	---
Liberty, Mississippi	299C3

6. The window period for filing applications for Channel 299C3 at Liberty, Mississippi, will open on **June 7, 1996**, and close on **July 8, 1996**.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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918 F.2d 960 (D.C. Cir. 1990). Accordingly, because acceptance of petitioner's late-filed pleading would prejudice a proposal

timely filed in this proceeding, we consider petitioner's late-filed expression unacceptable in this proceeding.